

# PACE ENVIRONMENTAL LITIGATION CLINIC, INC.

PACE UNIVERSITY SCHOOL OF LAW

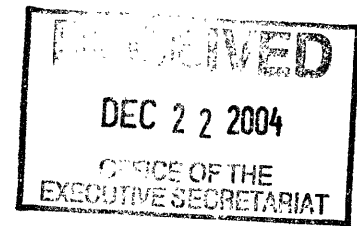
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December 13, 2004

Michael Leavitt  
Administrator  
U.S. EPA  
Ariel Rios Building  
1200 Pennsylvania Avenue  
Washington, D.C. 20406

Dear Mr. Leavitt:

Please find enclosed a copy of a complaint filed against Defendants Town of New Windsor and CAMO Pollution Control Inc., for violations of the Clean Water Act.

Sincerely,

  
Jason Bailey  
Legal Intern



IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

RIVERKEEPER, INC.,

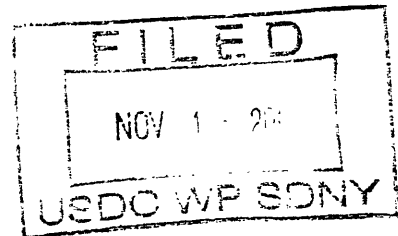
Plaintiff,

v.

TOWN OF NEW WINDSOR, as owner of the  
New Windsor Sewage Treatment Plant,  
CAMO POLLUTION CONTROL, INC., as operator  
of the New Windsor Sewage Treatment Plant,

Defendants.

Civ. No.



04 CIV. 8997

**COMPLAINT**

Plaintiff Riverkeeper, Inc., by its attorneys Pace Environmental Litigation Clinic, allege for its complaint herein as follows:

**STATEMENT OF THE CASE**

1. This action is a citizens' suit brought under the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1376 (hereinafter "Clean Water Act"), seeking relief from Defendants' violations of the Clean Water Act.

2. Plaintiff seeks injunctive relief, declaratory relief, civil penalties, and costs including attorney's fees.

**JURISDICTION**

3. This Court has subject matter jurisdiction over the claims set forth in this complaint pursuant to 33 U.S.C. § 1365(a)(1) and federal question jurisdiction, 28 U.S.C. § 1331.

4. On July 6, 2004, Plaintiff gave notice of the violations and its intent to file suit against defendants to the Administrator of the United States Environmental Protection Agency ("EPA"), to the Commissioner of the New York State Department of Environmental Conservation ("DEC"), and to the defendants, pursuant to Section 505(b)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(b)(1)(A).

5. More than 60 days have passed since the above-referenced notice was served upon defendants and the governmental parties named above, thus satisfying section 505(b)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(b)(1)(A).

6. Neither the EPA nor the DEC has commenced and diligently prosecuted a court action to redress the violations under section 505(b)(1)(B) of the Clean Water Act, 33 U.S.C. § 1365 (b)(1)(B).

### **VENUE**

7. Venue is appropriate in the Southern District of New York pursuant to Section 505(c)(1) of the Clean Water Act, 33 U.S.C. § 1365(c)(1) because the source of the violations is located within this District.

### **PARTIES**

8. Riverkeeper, Inc. (hereinafter "Riverkeeper"), is a non-profit corporation organized under the laws of the State of New York. Riverkeeper's primary purpose is to conserve and enhance the biological integrity of the Hudson River and its tributaries and to protect the Hudson River's natural resources. Most of Riverkeeper's 5000 members live on or near the Hudson River and enjoy the Hudson River for a number of activities, including, but not limited to, fishing and boating, swimming, drinking water, and hiking. Riverkeeper's members share a common concern about the quality of the Hudson River and its tributaries including Moodna Creek. Riverkeeper's members use and enjoy Moodna Creek as a recreational and aesthetic resource.

9. Plaintiff is a "citizen" within the meaning of the citizen suit provisions of section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a).

10. The quality of the Hudson River and its surrounding areas directly affects the health, recreational, aesthetic, commercial, and environmental interests of Riverkeeper's members. The interests of Riverkeeper's members are being, and will be, adversely affected by Defendants' failure to comply with the requirements of the Clean Water Act.

11. Defendant Town of New Windsor is the owner of New Windsor Sewage Treatment Plant (hereinafter "Plant") and is responsible for complying with the provisions of the Clean Water Act in the Plant's daily operations.

12. Defendant CAMO Pollution Control, Inc. is the operator of the New Windsor Sewage Treatment Plant and is responsible for complying with the provisions of the Clean Water Act in the Plant's daily operations.

13. Defendants are "persons" within the meaning of the citizen suit provisions of the section 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1).

### **GENERAL ALLEGATIONS**

14. Congress enacted the Clean Water Act in 1972 for the purpose of "restor[ing] and maintain[ing] the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251. One of the specific goals of the Act was "that the discharge of pollutants into the navigable waters be eliminated by 1985." Id.

15. The Clean Water Act prohibits the discharge of pollutants from a point source to the waters of the United States, except pursuant to, and in compliance with, a National Pollutant Discharge Elimination System ("NPDES") permit. 33 U.S.C. § 1311(a); 33 U.S.C. § 1342. The State of New York is authorized to issue State Pollutant Discharge Elimination System ("SPDES") permits in lieu of the NPDES permits pursuant to Clean Water Act § 402, 33 U.S.C. § 1342.

16. The Clean Water Act defines "pollutant" as "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. § 1362(6).

17. The Clean Water Act defines "point source" as "any discernable, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

18. Pipes are point sources within the meaning of section 502 of the Clean Water Act, 33 U.S.C. § 1362(14).

19. "Waters of the United States" within the meaning of the Clean Water Act include any navigable waters or waters that are tributaries to navigable waters. 33 U.S.C. § 1362(7).

20. The Hudson River, its tributaries, and adjacent associate wetlands are waters of the United States within the meaning of the Clean Water Act.

21. Moodna Creek is a tributary to the Hudson River.

**FIRST CLAIM FOR RELIEF: VIOLATIONS OF THE CLEAN WATER ACT BY  
SPECIFIC ILLEGAL DISCHARGES TO WATERS OF THE UNITED STATES**

22. Defendants own and operate a wastewater treatment plant at the New Windsor Sewage Treatment Plant, Town of New Windsor, Orange County, New York. The Plant discharges sewage treatment plant effluent through unpermitted maintenance manholes into Moodna Creek. Defendants have neither applied for, nor have been granted, a SPDES permit for its discharges from these unpermitted maintenance manholes in Moodna Creek.

23. Defendants' sewage treatment plant is a "point source" within the meaning of section 502(14) of the Clean Water Act, 33 U.S.C. § 1362(14), because its outfalls are "discernable, confined and discrete conveyance[s] . . . from which pollutants are or may be discharged."

24. Suspended solids are "pollutants" within the meaning of section 502 of the Clean Water Act, 33 U.S.C. § 1362(6).

25. Biological Oxygen Demand ("BOD") is a "pollutant" within the meaning of section 502 of the Clean Water Act, 33 U.S.C. § 1362(6).

## REQUEST FOR RELIEF

WHEREFORE, Plaintiffs demand judgment as follows:

A. Declare Defendants to have violated, and to be in violation of section 301 of the Clean Water Act, 33 U.S.C. §§ 1311.

B. Enjoin Defendants from operating the New Windsor Sewage Treatment Plant in such a manner as will result in the further violations of section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a) and require defendants to take such measures as are necessary to bring the plant into compliance with the Clean Water Act;

C. Require Defendants to obtain a SPDES permit in compliance with section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a);

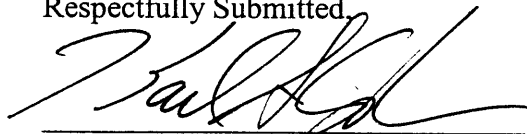
D. Award civil penalties in the amount of \$27,500 per day of violation, as authorized by section 309(d) of the Clean Water Act, 33 U.S.C. 1319(d);

E. Award Plaintiffs their costs, including reasonable attorney, witness and consultant fees, as authorized by section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d); and

F. Award such other relief as this Court deems just and proper.

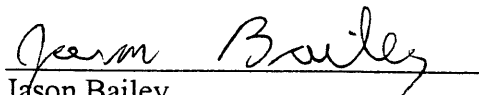
Dated: New York, New York  
November 15, 2004

Respectfully Submitted,



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